

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34881

UNION PACIFIC RAILROAD COMPANY – TRACKAGE RIGHTS EXEMPTION –
BNSF RAILWAY COMPANY

Decided: June 6, 2006

On May 31, 2006, Union Pacific Railroad Company (UP) filed a notice of exemption pursuant to 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of BNSF Railway Company (BNSF) in Tacoma, WA, between “Bullfrog Junction” near BNSF’s Puyalloy River Bridge 8.78 and the point of connection with BNSF’s Seattle Division main line at River Street Interlocking, BNSF milepost 38.94X, a distance of approximately 0.6 miles. The exemption is scheduled to become effective June 7, 2006.

On June 5, 2006, John D. Fitzgerald, for and on behalf of the United Transportation Union-General Committee of Adjustment (UTU/GO-386), filed a petition seeking a stay of the operation of the notice of exemption. According to UP’s notice, the proposed trackage rights would create an additional overhead routing for UP trains in the Tacoma area. UTU/GO-386 points out that the trackage rights agreement indicates that UP and BNSF will enter into a separate agreement granting BNSF the right to allow Tacoma Rail to act as BNSF’s agent over UP owned trackage located between Port of Tacoma and BNSF’s trackage at Tacoma.

UTU/GO-386 asserts that UP’s notice should be stayed until the agreement between UP and BNSF governing operations over UP-owned trackage between Port of Tacoma and BNSF trackage is made public and any Board approval or exemption is obtained. UTU/GO-386 argues that the trackage rights class exemption is not appropriate here because it is part of a multiple-carrier interrelated transaction to restructure the operations of UP, BNSF, shortline and regional carriers in the Seattle, WA to Eugene, OR area. UTU/GO-386 also argues that UP’s notice is incomplete and that operations involving Tacoma Rail under the separate agreement are important to assessing the validity of any trackage rights agreement. UTU/GO-386 argues further that railroad employees have a strong interest in knowing the full scope of this transaction so that they may evaluate whether employee protective conditions will protect their interests. UTU/GO-386 adds that UP will not be harmed because it presently has satisfactory routes in the Tacoma area. UP filed a response on June 5, 2006. Also, on June 5, 2006, the Brotherhood of Locomotive Engineers and Trainmen filed a pleading endorsing UTU/GO-386’s position.

DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner has a strong likelihood of prevailing on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

UTU/GO-386 has failed to meet its burden of demonstrating that the stay criteria are satisfied. In particular, UTU/GO-386 has not demonstrated a strong likelihood of prevailing on the merits. UP has submitted sufficient information with its notice to comply with the Board's rules at 49 CFR 1180.4(g). The remaining concerns expressed by UTU/GO-386 are not relevant to the authority sought by UP in this notice of exemption.

Invoking the Board's authority under the class exemption for the overhead trackage rights merely confers authority on UP to acquire those trackage rights and nothing more. Should BNSF attempt to enter into an agreement with Tacoma Rail that would require Board authorization, then UTU/GO-386 properly may challenge that agreement at that time.

Further, UTU/GO-386 has failed to demonstrate irreparable harm to affected employees absent a stay of the effectiveness of the exemption authorizing the trackage rights. Any BNSF employees adversely affected by the grant of trackage rights will be subject to the standard labor protective conditions imposed in this proceeding. Employees may attempt to show that those protections are insufficient to address the harm from this grant of trackage rights, but UTU/GO-386 has not made such a showing on this record.

Finally, staying the effectiveness of the exemption would delay the benefits of enhanced flexibility and efficiency associated with the alternate route for UP in the Tacoma area. Such action would harm UP and would not be in the public interest.

For these reasons, UTU/GO-386's petition for stay is denied.

It is ordered:

1. UTU/GO-386's petition for stay is denied.
2. This decision is effective on its service date.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary